

BUILDING MANAGEMENT AGREEMENT

THIS AGREEMENT, made and entered into effective as of this 9th day of February 2004, by and between EXECUTIVE PROPERTY SERVICES, INC., hereinafter referred to as "Independent Contractor", and The MONTANA DEPARTMENT OF CORRECTIONS, hereinafter referred to as "Owner".

WITNESSETH:

WHEREAS, Owner has acquired title to certain real estate, located at 700 East Little Street (formerly known as "Eastmont") in Glendive, Montana, hereinafter referred to as the "Subject Property".

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto agree as follows:

1. Appointment of Independent Contractor.

The Owner hereby appoints and retains the Independent Contractor to supervise the maintenance of the Subject Property upon the conditions and for the term and compensation hereinafter set forth.

2. Term of Agency.

The term of this Building Management Agreement shall be from and after the date hereof for a period month-to-month, unless terminated prior thereto upon the mutual written agreement of the parties hereto, or as otherwise provided. This agreement will be automatically renewed for additional one (1) month periods unless terminated by either party prior to the most current expiration date. Such termination will be in writing at least 30 days prior to the end of the most current period.

3. Acceptance of Agency and Duties of Independent Contractor.

Independent Contractor hereby accepts such agency and agrees to perform the following services on the Owner's behalf:

- a. Prepare a checklist for the use of on-site DOC personnel to accomplish daily, weekly and monthly building inspections. The Independent Contractor's maintenance personnel will train the DOC personnel to recognize potential problems and instruct them on the proper procedures to insure the safety of the building and any occupants.
- b. Contract on behalf of Owner for the inspection and upkeep of all of the Subject Property's safety systems including fire alarms, fire sprinkler systems, smoke detection systems, fire extinguishers and any other systems that require safety inspections by qualified licensed personnel.
- c. Carry out any repairs necessary for the safety of the building as well as such maintenance that may be needed to insure the continued viability of occupancy at a later date. Any such maintenance will be approved prior to completion by the Owner point of contact as designated in this Agreement unless such maintenance is deemed to be of a safety or emergency nature or such maintenance that may be required to meet standards set by the codes or laws of the State of Montana or such governing agency as may be set by such agency to insure the safe operation of

certain systems in the Subject Property. The Independent Contractor may purchase on behalf of the Owner such materials as may be necessary for the safe upkeep of the Subject Property when such purchases have been approved by the Owner's point of contact or the Owner's representative. The Owner agrees to provide the Independent Contractor with the names and contact information for those people authorized to approve purchases on behalf of the owner, or otherwise engage the Independent Contractor in some scope of work or activity on behalf of the Subject Property. Owner agrees that should the Independent Contractor make a purchase on behalf of the Owner for required work on the Subject Property, the Owner will reimburse the Independent Contractor upon receipt of the proper documentation of the purchase in a timely manner.

d. Periodically inspect the Subject Property, but no less than once a month, to insure that the Subject Property continues to operate at the minimum necessary level to insure the safety of the property as well as the continued viability of occupancy at short notice. Such inspections will be documented and copies of the inspection will be given to the Owner or any such point of contact as designated in this Agreement.

e. Be available to assist with any issues or questions that may arise during the term of this agreement. Such availability may be accessed through the Independent Contractor's 24-hour office phone number utilizing the on-call maintenance personnel.

f. The Independent Contractor shall have in its employ at all times a sufficient number of capable employees to enable it to properly, adequately, and safely carry out the duties outlined in Paragraph 3, subparagraphs a-f of this Agreement for the Subject Property. All matters pertaining to the employment, supervision, compensation, promotion and discharge of such employees are the responsibility of the Independent Contractor, which is in all respects the employer of such employees. Independent Contractor may execute in its own name, not as Independent Contractor for Owner, collective bargaining agreements or labor contracts resulting therefrom, so long as the execution of any such agreement does not impose any liability on Owner. Independent Contractor shall fully comply with all applicable laws and regulations having to do with Workers' Compensation, Social Security, Unemployment Insurance, hours of labor, wages, working conditions and other employer-employee related subjects. Independent Contractor represents that it is and will continue to be an equal opportunity employer and must advertise as such. This agreement is not one of agency by the Independent Contractor for Owner but one with the Independent Contractor engaged independently in the business of managing properties on its own behalf as an independent contractor. All employment arrangements are therefore solely its responsibility and Owner shall have no liability with respect thereto.

g. Independent Contractor acknowledges that it will not act as leasing agent for, and shall have no authority to employ the services of brokers for, the Subject Property.

h. Independent Contractor shall use reasonable efforts to procure, at the expense of Owner, all municipal, state or governmental licenses, permits, inspection fees, or other governmental fees that may be required in the operation of the Subject Property.

i. Independent Contractor acknowledges that it has reviewed the existing leases for the Subject Property and agrees to comply with the management and maintenance standards set forth in said leases and in all future leases for the Subject Property, provided that such future leases are forwarded to Independent Contractor for review.

Except as otherwise stated in subparagraphs 3(h) and 3(I), Independent Contractor shall be obligated to perform the responsibilities and obligations of the Independent Contractor hereunder, with the prior written approval of Owner, which shall promptly be requested by

Independent Contractor. Notwithstanding any other provision herein, Independent Contractor shall be liable only for its negligence, bad faith or breach of express provisions of this Agreement, but in all other respects shall not be liable.

4. Insurance.

Owner shall maintain at its sole cost the following insurance:

a. Insurance against loss or damage by fire, windstorm or other extended coverage risks for such amount and covering such risks as Owner may determine in the exercise of its reasonable discretion.

b. General liability insurance against claims for bodily injury, death or property damage, occurring in, on or about the Subject Property and the adjoining streets, sidewalks and passageways. Independent Contractor shall be named therein as an insured party, in addition to the Owner.

c. Statutory Workers' Compensation insurance covering servants and employees of Owners (but not of Independent Contractor) engaged in the performance of this Agreement and the care, maintenance, operation and protection of the Subject Property.

5. Compensation

The Owner shall pay the Independent Contractor at the following hourly rates:

a. \$25 per hour for general work not requiring specific knowledge or licensure (such as the monthly inspections or obtaining required safety inspections from qualified licensed personnel).

b. \$30 per hour for specialized work not requiring specific knowledge or licensure (such as minor HVAC, plumbing, electrical, or carpentry work).

c. \$35 per hour for specific work requiring licensure or advanced troubleshooting.

The Owner agrees to pay the Independent Contractor for parts and materials purchased on behalf of the Owner for the upkeep of the Subject Property providing such purchases were approved by the Owner prior to the purchase or providing that such purchase was deemed by the Independent Contractor to be necessary for the safe upkeep of the Subject Property.

6. Indemnification

The Owner agrees to indemnify the Independent Contractor, its officials, agents, and employees, from and against claims, demands, and causes of action, including the cost of defense, arising in favor of the owner's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of premises/facilities design defects and operating systems, property and adjoining streets, sidewalks, and passageways, tenants and other building occupants, or resulting from the acts or omissions of the owner, its agents, employees, and subcontractors under this agreement.

The Independent Contractor agrees to indemnify the owner, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action, including the cost of defense, arising in favor of the Independent Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of negligent maintenance, or acts/omissions of the contractor and/or its agents, employees, subcontractors or its representatives under this agreement.

7. Contractor Insurance

The Independent Contractor shall maintain for the duration of the contract, at its cost, insurance coverage against claims for injuries to persons or damages to property including contractual liability which may arise from work performed by the contractor, his agents, representatives, employees, or assigns under the contract.

The Independent Contractor's insurance coverage shall be primary coverage as respects the owner. Any insurance maintained by the owner shall be in excess of the Independent Contractor's insurance and shall not contribute with it. The Independent Contractor's insurance shall cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns, or servants.

The Independent Contractor must be prepared to provide a certificate of insurance for Commercial General Liability (Occurrence Coverage), to include bodily injury, personal injury and property damage with combined single limits of \$1,000,000 per claim and \$2,000,000 aggregate per year, from an insurer with a Best's Rating of no less than A-.

Worker's compensation insurance shall be maintained as required by the labor code of the State of Montana. The Independent Contractor will at all times comply with applicable worker's compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable.

All certificates, indicating compliance with the required coverage, must be filed with the owner within ten (10) working days. The certificates and/or endorsements shall evidence that coverage is provided for the duration of the contract.

8. Extraordinary Services.

If the Independent Contractor is called upon by the Owner to perform services not customarily part of the usual service performed by a managing Independent Contractor, Independent Contractor shall be entitled to receive, as additional compensation therefore, an amount commensurate with such services.

9. Termination.

Notwithstanding other provisions of the Building Management Agreement, the Agreements herein contained shall be terminated and the obligations of the parties hereto shall thereupon cease, except as to any obligations or liabilities arising or occurring prior to termination, and an accounting shall be made by Independent Contractor to Owner upon the occurrence of any of the following circumstances or events:

- a. Upon destruction or condemnation of the Subject Property.
- b. If Independent Contractor or Owner is adjudged as bankrupt or shall make an assignment for benefit of creditors, or take advantage of any insolvency act, the other party may terminate this Building Management Agreement serving written notice, by certified or registered mail, postage prepaid, at the address hereinafter set forth;
- c. Upon the mutual agreement of Owner and Independent Contractor expressed in writing;
- d. Upon Independent Contractor's discontinuing the office management services;
- e. For cause after thirty (30) days' notice and failure of Independent Contractor to cure such default within 30-day period or to diligently commence to cure such default if it reasonably shall take longer than 30 days to cure such default.

10. Limitation of Liability.

Owner's liability shall be limited to its interest in the Subject Property.

11. Consents and Approvals.

In any instance under this Building Management Agreement, in which the consent or approval of Owner to any proposed action is required, such consent or approval shall be deemed to have been given unless written objection to such proposed action, stating with particularity the grounds for such objection, is sent by Owner to Independent Contractor within fifteen (15) days after receipt of written request for such consent or approval from Independent Contractor.

12. Waiver of Subrogation.

Owner and Independent Contractor hereby waive their respective rights of recovery against each other for any loss insured or insurable against under fire, extended coverage or all risk insurance policies, and shall cause their respective insurers to waive their rights of subrogation.

13. Notices

Notices hereunder shall be valid if mailed by registered or certified mail, postage prepaid, or by overnight expresses mail, addressed as follows:

If to Owner:

Montana Department of Corrections
C/O Gary Willems
1539 11th Avenue
Helena MT 59620

If to Independent Contractor:

Executive Property Services
100 Emerald Drive
Billings, MT 59105

or to such other address, with respect to either party, as such party shall notify the other party hereto in writing, as above provided.

14. Assignment:

Independent Contractor shall be prohibited from assigning its interest in this Building Management Agreement, without written consent of Owner.

Owner may assign its interest in this Building Management Agreement to any purchaser of the building.

15. Venue

In the event of litigation concerning this contract, venue shall be the First Judicial District in and for the County of Lewis and Clark, Montana, and the Contract shall be interpreted according to the laws of the State of Montana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

INDEPENDENT CONTRACTOR:

EXECUTIVE PROPERTY SERVICES, Inc.

BY: _____
Steven N. Nitz, President

OWNER:

MONTANA DEPARTMENT OF CORRECTIONS

BY: _____
Joe Williams, Administrator
Centralized Services Division